

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

IN RE:**MDL NO. 2753**

**ATRIUM MEDICAL CORP. C-QUR MESH
PRODUCTS LIABILITY LITIGATION**

**MDL Docket No.
1:16-md-02753-LM**

ALL CASES

**PLAINTIFFS' AND DEFENDANTS' JOINT AGENDA
FOR AUGUST 8, 2019 STATUS CONFERENCE**

Now come the parties in the above-entitled multidistrict litigation and jointly submit the below agenda items, with a brief description of the items at issue, in preparation for the Status Conference to be held on August 8, 2019:

I. Status of Depositions

A. Former and Current Defendant Employees:

	Deponent	Deposed	Scheduled	Requested
1.	Phil McNamara	Sept. 6, 2018		
2.	Jeff Harris	Sept. 22, 2018		
3.	Trevor Carlton	Sept. 27/28, 2018		
4.	Paul Martakos	Dec. 20, 2018		
5.	Jim Fitzgerald	Jan. 24, 2019		
6.	Jessica Crosby	Feb. 11, 2019		
7.	Timothy Talcott	Feb. 21/22, 2019		
8.	Chasity Murray	Mar. 26, 2019		
9.	Dan Hill	Mar. 28, 2019		
10.	Ted Karwoski	Apr. 16, 2019		
11.	Raymond Kelly	Apr. 26, 2019		
12.	Scott Corbeil	Apr. 30, 2019		

	Deponent	Deposed	Scheduled	Requested
13.	Chad Carlton	May 2, 2019		
14.	Melissa DePrince	May 10, 2019		
15.	Theresa Morin	May 15, 2019		
16.	Keith Faucher	May 16, 2019		
17.	Geoff Moodie	May 22, 2019		
18.	Anthony Horton	June 7, 2019		
19.	Joe Ferraro	July 10, 2019		
20.	Frank Casamassina	July 12, 2019		
21.	Mark Brown	July 18, 2019		
22.	Kenneth Collins	July 23, 2019		
23.	Joe DePaolo	July 30, 2019		
24.	Steve Herweck		Aug. 22, 2019	
25.	Lena Hagman		Oct. 17, 2019	
26.	Mead Poncin		Sept. 25, 2019	
27.	John Gomes		TBD	
28.	Terri Clark		TBD	

Some of the depositions at issue have been or are being rescheduled at either the request of Plaintiffs' counsel or Defense counsel due to various scheduling issues. One 30(b)(6) witness (Peter Hjalmarson) on the issue of jurisdiction was deposed. Two previously agreed Rule 30(b)(6) Notices of Deposition to Atrium Medical Corporation were withdrawn by the Plaintiffs.

B. Initial Discovery Pool Plaintiffs and Their Physicians:

Depositions of the Discovery Pool Plaintiffs and their implanting/explanting physicians were largely completed. However, the parties were unable to depose the explanting physician of Plaintiff Sargent, Case No. 1:17-cv-00740-LM, who was not chosen for the Trial Pool. The parties disagree as to whether this deposition should be completed. *See infra* Section III.2.

II. Pending Motions

A. Getinge AB's Motion to Dismiss Based on Lack of Personal Jurisdiction:

The Court has previously set Getinge AB's motion to dismiss for hearing on September 9-11, 2019, with a pre-hearing conference set for August 27, 2019. (*See* 5/13/2019 Notices of hearing dates.) Getinge AB's experts, John Orcutt and Alex Fernandez, have been deposed. Plaintiffs served the report of their expert, Dana Messina, on July 1, 2019. Mr. Messina was deposed on July 26, 2019. The parties have agreed on the following schedule of pre-hearing deadlines:

Event	Date
Pre-Hearing Dates	
Completion of depositions of Defendants' experts. (completed)	June 6
Plaintiffs to disclose expert witnesses. (completed)	July 1
Defendants to depose Plaintiffs' expert witnesses. (completed)	July 31
Parties to exchange proposed live witnesses and exhibit lists. Parties to confer in good faith to resolve any evidentiary objections to exhibits and shall endeavor to stipulate to authenticity and to satisfaction of business records hearsay exception (where applicable).	August 6
Parties to file any motions in limine for witnesses or exhibits as to which the Court has not yet ruled.	August 13
Parties to serve deposition designations (only for witnesses who are not listed on parties' live witness list and which would not be offered solely for impeachment).	August 13
Parties to serve objections to the other side's deposition designations and counter-designations (only for witnesses who are not listed on parties' live witness list and which would not be offered solely for impeachment).	August 19
Parties to serve objections to the other side's counter-designations; parties to confer in good faith to resolve any objections to deposition designations.	August 23
Final pre-hearing conference. Court to hear motions in limine and to resolve any outstanding objections to deposition designations.	August 27 10:00 a.m.
Dates and Times of Hearing	
Hearing	Sept. 9-11

Event	Date
Opening statements (morning) and Plaintiffs' witnesses (afternoon)	Sept. 9 9 to 4
Plaintiffs' witnesses continued (morning) and Getinge AB's witnesses (afternoon)	Sept. 10 9 to 4
Getinge AB's witnesses continued (morning), Plaintiff's rebuttal witnesses (afternoon) and closing arguments (afternoon)	Sept. 11 9 to 4

The parties disagree as to whether the full hearing, scheduled for September 9-11, should be open to the public. Likewise, the parties disagree as to whether the exhibits to be used in the hearing should maintain their confidential designations. Plaintiffs believe that it is essential to the nearly 1,500 individual plaintiffs, their counsel, and to the public at large, that the full hearing, along with all evidence be kept open to the public. Moreover, it is plaintiffs' position that, in the interest of justice and as a matter of public policy, the hearing should be open. Getinge AB intends to move to seal the hearing. Getinge AB has produced voluminous confidential and propriety information regarding its finances and operations during the course of jurisdictional discovery, which Getinge AB designated "confidential" pursuant to the Protective Order entered by this Court (Dkt. 97). Plaintiffs have not previously challenged Getinge AB's "confidential" designations pursuant to the procedures set forth in that order. The Court has not even determined that Getinge AB is a proper defendant in this action—that is precisely this issue raised by Getinge AB's motion to dismiss. Making Getinge AB's confidential information available to the public, including its competitors, would be highly prejudicial to Getinge AB.

B. Selection of Trial Pool Cases and Pending Motions to Dismiss

On July 15, 2019, the Parties selected the following trial pool cases:

1. Barron, Carrie, Case No. 1:17-cv-00742-LM (by Plaintiffs),
2. Hicks, Daniel, Case No. 1:17-cv-00070-LM (by Plaintiffs),
3. Luna, Martha, Case No. 1:16-cv-00372-LM (by Plaintiffs),

4. Newell, Robert, Case No. 1:17-cv-00250-LM (by Plaintiffs),
5. Petersen, Michael, Case No. 1:18-cv-00212-LM (by Defendants),
6. Vollmar, Amy, Case No. 1:17-cv-00704-LM (by Defendants),
7. Hickinbottom, Juanita, Case No. 1:17-cv-00713-LM (by Defendants),
8. Shumaker, Joseph, Case No. 1:17-cv-00741-LM (by Defendants).

Motions to dismiss in each of these cases have been fully briefed and are ready to be decided by the Court, unless the Court would like to schedule oral argument. (*Barron* Dkt. 66, *Hicks* Dkt. 156, *Luna* Dkt. 178, *Newell* Dkt. 121, *Petersen* Dkt. 60, *Vollmar* Dkt. 68, *Hickinbottom* Dkt. 67, *Shumaker* Dkt. 65.) The Defendants respectfully ask that the Court prioritize the pending motions in these cases, as the Court's rulings could impact trial preparation. In particular, the Defendants respectfully ask that the Court give the highest priority to those cases where Defendants have moved to dismiss the cases in their entirety on grounds of statute of limitations (*Petersen*, *Hickinbottom*, *Shumaker*), so that replacement cases can be selected in the event these cases are dismissed. Plaintiffs contend that discovery has already been completed on these matters. For this reason, and because the parties have already made their trial selections, Plaintiffs believe that handling these motions at the same time as dispositive motion practice is the most efficient way of handling. The parties disagree as to whether cases dismissed through motion practice prior to trial should be subject to replacement. Defendants believe that cases dismissed through Rule 12 or Rule 56 motions should be subject to substitution. Plaintiffs believe that Defendants should not be entitled to substitution of trial cases that are dismissed through motion practice.

C. Motions to Dismiss the Remaining Initial Discovery Pool Cases filed by Atrium Medical Corporation and Maquet Cardiovascular US Sales, LLC:

The following motions to dismiss are also fully briefed and ready to be decided by the Court in the remaining Initial Discovery Pool Cases, unless the Court would like to schedule oral argument.

1. Badry, Andja, Case No. 1:16-cv-00360-LM, Dkt. 174,
2. Blackwood, Felicia, Case No. 1:16-cv-00379-LM, Dkt. 171,
3. Caldwell, Georgianne, Case No. 1:17-cv-00021-LM, Dkt. 162,
4. Croucher, Jeffrey, Case No. 1:16-cv-00371-LM, Dkt. 160,
5. Moore, Tammy, Case No. 1:18-cv-00010-LM, Dkt. 64,
6. Norris, Christopher, Case No. 1:18-cv-00065-LM, Dkt. 59,
7. Sargent, Crystal Demetrieal, Case No. 1:17-cv-00740-LM, Dkt. 65.

III. Outstanding Meet and Confer Issues

1. On June 7, 2019, Plaintiffs requested the deposition of Lena Hagman, a member of the Getinge executive team who resides and works in Sweden. The Parties have been discussing the potential scope of Ms. Hagman's deposition in exchange for Defendants' agreement not to raise Apex objections to the agreed upon topics. Ms. Hagman's deposition is currently scheduled for October 17 and the parties continue to meet and confer in the hope of reaching agreement without the need for Court intervention. Due to the timing of the proposed deposition of Ms. Hagman, the parties have agreed to allow Plaintiffs to supplement the expert report of their regulatory expert. The parties continue to discuss timing of the supplement and the deposition of Plaintiffs' regulatory expert.

2. The parties disagree as to whether depositions should be ongoing in cases not selected into the final trial pool. Plaintiffs believe that all resources should be placed into readying

the 8 cases selected for the trial pool. Defendants believe that initial discovery of the Discovery Pool Plaintiffs should be completed in case there is a need to substitute a trial pool case as a result of voluntary or involuntary dismissal. The parties have not exchanged position papers on this issue and Defendants request the opportunity to set out their position more fully for the Court, by either position paper or formal briefing.

3. The parties continue to meet and confer regarding various other matters, but none have reached an impasse requiring court intervention.

Dated: August 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2019, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to all counsel of record.

/s/ Katherine Armstrong
Katherine Armstrong